

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Lundberg et al.
Serial No. : 10/693,317
Filed : October 23, 2003
For : NEW PHARMACEUTICAL FORMULATION
AND PROCESS
Examiner : Sheikh, Humera N.
Group Art Unit : 1615

I hereby certify that this paper is being
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/John M. Genova/ August 17, 2007
Signature Date

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**INFORMATION DISCLOSURE STATEMENT
BEFORE MAILING OF EITHER A FINAL ACTION
OR NOTICE OF ALLOWANCE (37 C.F.R. §1.97(c))**

Sir:

Applicants submit this communication in compliance with 37 C.F.R. §§1.56, 1.97 and 1.98. Consideration of the document cited on the attached Form PTO/SB/08A is respectfully requested.

A second period of suspension of action was granted for six (6) months from the mail date (March 2, 2007) of the decision granting the suspension in the referenced application. The suspension expires September 2, 2007.

The second period of suspension was granted for the reasons provided in Applicants' petition. Specifically, there had not been any change in the status quo since the first petition: (1) there was no outstanding Office action requiring a reply, and (2) no decision had been made in the appeal (*Astra Aktiebolag v. Andrx Pharma*. Nos. 04-1562, -1563, -1589) pending before the

Court of Appeals for the Federal Circuit (“CAFC”), the disposition of which appeal is pertinent to the referenced application.

Subsequent to the decision granting the second suspension, the CAFC rendered its decision. By this Information Disclosure Statement, Applicants are submitting a copy of the CAFC’s opinion, In re Omeprazole Patent Litigation, 483 F.3d 1364, 82 U.S.P.Q.2d 1643 (Fed. Cir. 2007).

In brief, claims 1, 3, 6 and 8-19 of the subject application have been allowed. (See Office Action mailed November 2, 2005) As discussed in an Information Disclosure Statement filed December 7, 2004, claims 1-3, 7, 16, 20 and 21 of the great-great-grandparent of the subject application, i.e., US 6,013,281 the (the “’281 patent”), were found to be invalid in view of the same prior art that is essentially before the Examiner. There is an overlap between the pending claims of the subject application and claims of the ’281 patent which were found to be invalid.

In its opinion, the CAFC affirmed the invalidity of claims 1-3, 7, 16, 20 and 21 of the ’281 patent.

TIME OF TRANSMITTAL OF INFORMATION DISCLOSURE STATEMENT

This Information Disclosure Statement is being filed after the period specified in 37 C.F.R. §1.97(c) but before the mailing date of either: (1) a final action under §1.113 or (2) a notice of allowance under §1.311, whichever occurs first.

Authorization is hereby given to charge Deposit Account No. 23-1703 in the amount of One Hundred and Eighty Dollars (\$180.00) to cover the fee as required by 37 C.F.R. §1.17(p) and any other fee that may be required in connection with this communication.

Dated: August 17, 2007

Respectfully submitted,

/John M. Genova/
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